

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA DIVISION**

TENTATIVE RULINGS

EVENT DATE: 08/26/2020
JUDICIAL OFFICER: Kevin DeNoce

EVENT TIME: 10:00:00 AM

DEPT.: 43

CASE NUM: 56-2020-00542852-CU-BT-VTA
CASE TITLE: COLOURPOP COSMETICS LLC VS. CHEENEY

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Business Tort

EVENT TYPE: Motion for Preliminary Injunction (CLM) - (1 hour time estimate)
CAUSAL DOCUMENT/DATE FILED:

This case has been assigned to Judge DeNoce for all purposes. The morning calendar before Judge Kevin G. DeNoce will begin at 9 a.m. in courtroom 43. Cases including *ex parte* matters will not be called prior to 9 a.m. Please check in with the courtroom clerk by no later than 8:45 a.m. If appearing by Court Call, please call in between 8:35 and 8:45 a.m.

At this time, as a result of the pandemic, all appearances are to be by CourtCall pursuant to the Ventura Superior Court's civil coronavirus case rules:
<http://www.ventura.courts.ca.gov/covid19/CivilReopeningPlanFinal.pdf>

If you decide to submit on the court's tentative decision without appearing, send an email to the court at: Courtroom43@ventura.courts.ca.gov stating that you submit on the tentative, and copy all counsel/parties on your email. Do not call in lieu of sending an email. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence.

If you wish to obtain a copy of any orders issued by the court at the hearing, please contact the Records Dept. one week after the hearing at: (805) 289-8668. Absent waiver of notice and in the event an order is not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

For general information regarding Judge DeNoce and his courtroom rules and procedures, please visit: <http://www.denoce.com>

Discussion:

The court is not issuing a tentative decision at this time but rather is responding to counsel's request as to whether the court has questions or specific areas of concern.

Evidentiary objections to Reply Declarations of Laura Nelson, Shaun McDonald, and Daniel B. Garrie:

The court intends to OVERRULE all objections made on the grounds of "inadmissible because

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matters/exhibit recited were previously known to declarant and do not constitute newly discovered evidence."

Laura Nelson Reply Declaration:

Sustain in part, Overrule in part.

SUSTAIN objections nos. 1; 3-15; 17-24; 27-31; 33-35; 39-40; 42-60.

OVERRULE objections nos. all objections made on grounds of "inadmissible because matters/exhibit recited were previously known to declarant and do not constitute newly discovered evidence."

Daniel B. Garrie's Reply Declaration:

OVERRULE objections nos. 1-44.

Background:

Plaintiff is a family-run, American cosmetics company based in Oxnard that creates and manufactures cruelty-free, quality cosmetics with budget-friendly prices that are sold to customers around the world. Until recently, Def Jordynn Cheeney, aka Jordynn Wynn, was one of Plaintiff's most trusted employees. Plaintiff alleges that Defendant Wynn stole its confidential and proprietary trade secret information and secretly shared it with Def Insert Name Here, LLC, (" INH") a company that Wynn co-founded. Plaintiff seeks an injunction prohibiting Defs from using, disseminating, destroying, or otherwise disclosing its trade secrets.

Plaintiff contends that it has developed a number of " trade secrets" that have enabled it to rise to success, including proprietary contract terms, marketing strategies, public relations contact lists, and product formulation lists. Plaintiff uses this information to identify trends, target celebrities and brands with which they should partner, select and quickly manufacture products with high market demand, and efficiently launch those products with high returns on investment. Plaintiff alleges that this information is not available to the general public and would be valuable to other businesses, including Plaintiff' s competitors, who can profit off of Pl' s recipe for success without spending years and expending millions of dollars collecting, compiling, and analyzing the vast pool of market data.

According to Plaintiff, Wynn used her position at Colourpop to obtain valuable trade secrets, and that she has sent this information to INH and other third parties. Pl contends that injunctive relief is necessary to prevent damage to its business, including diminution of its competitive advantage in the beauty industry as well as potential harm to its existing and prospective business relationships.

Plaintiff seeks an injunction prohibiting Defendants and any other person acting in concert or participation with them, as well as all others that have knowledge or notice from using, disseminating, destroying, or otherwise disclosing Plaintiff' s trade secrets. The Defendant argues that Plaintiff has not established any likelihood that it will prevail on the merits of its CUTSA claim because it has failed to sufficiently identify the alleged trade secrets at issue, and Plaintiff has failed to establish any actual or threatened misappropriation of the same. Further, Defendant argues that Plaintiff fails to provide sufficient evidence of actual or threatened misappropriation and has failed to establish that it would suffer immediate irreparable harm without injunctive relief as it has not established that monetary damages are inadequate, and it unreasonably delayed in pursuing an injunction

Applicable Legal Standard for Issuing an Injunction:

Injunctions concerning trade secrets are governed by the principles that apply to general injunctions. (*Whyte v. Schlage Lock Co.* (2002) 101 Cal.App.4th 1443, 1449.) A plaintiff may seek to enjoin actual or threatened misappropriation of a trade secret until the trade secret ceases to exist. (CC §8201;3426.2(a).) In determining whether to issue a preliminary injunction, the trial court considers two factors: (1) the reasonable probability that the plaintiff will prevail on the merits at trial (CCP §526(a)(1)), and (2) a balancing of the "irreparable harm" that the plaintiff is likely to sustain if the injunction is denied as compared to the harm that the defendant is likely to suffer if the court grants a preliminary injunction. (CCP §526(a)(2); *14859 Moorpark Homeowner's Ass'n v. VRT Corp.* (1998) 63 Cal.App.4th 1396, 1402; *Pillsbury, Madison & Sutro v. Schectman* (1997) 55 Cal.App.4th 1279, 1283.) "In deciding whether to issue a preliminary injunction, a trial court weighs two interrelated factors: the likelihood the moving party

ultimately will prevail on the merits, and the relative interim harm to the parties from the issuance or nonissuance of the injunction. [Citation.]" (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 999, 90 Cal. Rptr. 2d 236, 987 P.2d 705.) "The trial court's determination must be guided by a 'mix' of the potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction. [Citation.]" (*Butt v. State of California* (1992) 4 Cal.4th 668, 678, 15 Cal. Rptr. 2d 480, 842 P.2d 1240.) When requesting injunctive relief, the movant bears the burden of establishing both: (1) a high likelihood of prevailing on the merits at trial, and (2) that the movant will suffer irreparable harm absent equitable relief. (*Pro-Family Advocates v. Gomez* (1996) 46 Cal.4th 1674, 1680-81.)

As summarized by the applicable jury instruction for misappropriating a trade secret, the elements are as follows:

1. That plaintiff owned/was a licensee of the following trade secret protected item or information;
2. That this/these items or information was/were a trade secret at the time of the misappropriation;
3. That defendant improperly acquired/used/ or disclosed the trade secret;
4. That plaintiff was harmed or defendant was unjustly enriched; and
5. That defendant's acquisition/use or disclosure was a substantial factor in causing plaintiff's harm or defendant to be unjustly enriched.

(CACI No. 4401.)

Of critical importance in this case is the definition of what constitutes a protectable trade secret. CACI No. 4402 defines a trade secret as information which is secret, has actual or potential independent economic value because of its secrecy, and that plaintiff made reasonable efforts to keep the information secret.

Plaintiff's Purported Trade Secrets are:

- (1) Ambassador Contracts;
- (2) Partner Contracts;
- (3) Launch Data;
- (4) Marketing Metrics;
- (5) PR Lists;
- (6) Press Activity;
- (7) Ingredient Lists

Questions for Plaintiff & Defendant and Requests of the Court:

The court does not believe that the issues in this case have been appropriately framed with specificity. The court has concerns regarding whether the purported trade secrets are sufficiently defined and subject to protection as trade secrets. Specifically, what constitutes protectable trade secrets within the above list of items -- exactly what provisions of the above documents? The court requests that Plaintiff lodge copies of the above documents with the specific portions claimed to be a trade secret highlighted or underlined. The court then requests that counsel for Plaintiff cite case law which indicates that the type of highlighted/underlined language is subject to trade secret protection -- for each specific provision claimed to be a trade secret. In other words, are there any cases which have held that the type of language seeking to be protected in this case have been deemed protectable trade secrets? If so, interlineate the case law into the subject documents for each provision claimed to be a trade secret. Defendants can do the same, i.e., cite specific case law which has held that what Plaintiff seeks to protect as a trade secret is not protectable. Perhaps a chart can be prepared which breaks down each provision which is claimed to be a trade secret and specific case law which supports or opposes such information being subject to protection.

The court would also like to know what sort of provisions in Ambassador Contracts and Partner Contracts took years to develop that would support such language being deemed a trade secret. The court would like further information on what Plaintiff did to keep the above documents secret and confidential.

"For purposes of preliminary injunction, the party seeking injunctive relief must 'describe the subject matter of the trade secret with sufficient particularity to separate it from matters of general knowledge in the trade or of special knowledge of those persons who are skilled in the trade, and to permit the

defendant to ascertain at least the boundaries within which the secret lies." (*Agency Solutions.Com*, 819 F. Supp. 2d at 101, quoting *Diodes, Inc. v. Franzen* (1968) 260 Cal. App. 2d 44, 253; see also *Universal Analytics, Inc. v. MacNeal-Schwendler Corp.*, 707 F. Supp. 1170, 1177 (CD. Cal. 1989), *affd*, 914 F.2d 1256 (9th Cir.1990). "It is crucial to any CUTSA cause of action - and any defense - that the information claimed to have been misappropriated be clearly identified." (*Agency Solutions.Com, LLC*, 819 F. Supp. 2d at 101.)